

AMENDED IN SENATE JUNE 4, 2007
AMENDED IN SENATE APRIL 17, 2007
AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 569

Introduced by Senator Steinberg

February 22, 2007

An act to amend Sections 1743, 1771.2, and 1776 of, and to add Section 1726.5 to, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 569, as amended, Steinberg. Public works: prevailing wage payments: payroll records.

(1) Existing law generally defines a "public work" as construction, alteration, demolition, installation, or repair work that is done under contract and that is paid for, in whole or in part, out of public funds, as defined, and requires the payment of the general prevailing rate of per diem wages to workers employed on public works projects costing over \$1,000, unless the awarding body, as defined, elects to initiate and enforce a labor compliance program, as defined, for every public works project under the authority of that awarding body.

This bill would require the body awarding a public work contract, *for which the overall construction cost is greater than \$100,000*, to report to the ~~Contractor's~~ Contractors' State License Board the name and license number of each contractor and subcontractor performing the public work and the name, location, and identification number of the public works project for which the contract is awarded, as provided.

(2) Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor or both,

if the Labor Commissioner determines, after investigation, that the contractor or subcontractor violated the laws regulating public works contracts. Existing law provides that the contractor and subcontractor are jointly and severally liable for all amounts due pursuant to a final order or a judgment on that final order, but requires the Labor Commissioner to collect amounts due from the subcontractor before pursuing the claim against the contractor.

This bill would specify that the contractor and subcontractor are jointly and severally liable for all amounts due pursuant to a final order or a judgment on that final order in any action initiated by any party to enforce the laws regulating public works contracts, but would, generally, release a contractor from a liability for penalties ~~resulted~~ *resulting* from a subcontractor's failure to pay prevailing wages, except as otherwise specified.

(3) Existing law generally requires contractors engaged in public works to pay employees the prevailing wage, as determined by the Director of Industrial Relations, and authorizes a joint labor-management committee established pursuant to a specified provision of federal law to bring an action against any employer who fails to pay prevailing wages as required by state law, not later than 180 days after the filing of a valid notice of completion, as specified, or acceptance of the public work, whichever occurs later, as provided.

This bill would instead authorize a joint labor-management committee to bring an action against a contractor or a subcontractor who fails to pay prevailing wages or comply with other specified state law requirements not later than 4 years after the violation occurs. This bill would also require the court to enjoin the violation, to award unpaid wages for distribution to employees, and to award the joint labor-management committee reasonable attorney's fees, costs, and expenses incurred in maintaining the action, as provided, and would grant the court discretion regarding the award of liquidated damages. *This bill would also provide, for purposes of these actions by a joint labor-management subcommittee against a contractor or subcontractor, that the contractor is not liable for violations of a subcontractor unless the action is commenced within the 180 days after either the filing of the valid notice of completion or 180 days after acceptance of the public work, whichever occurs later.*

(4) Existing law requires each contractor and subcontractor on a public works project to keep accurate payroll records containing information regarding his or her employees, including name, address,

social security number, and work history, and authorizes, for the purposes of these payroll recordkeeping requirements, the use of printouts of payroll data that are maintained as computer records, if certain conditions are met. Existing law requires that a certified copy of all payroll records be made available to the public upon request made by the public to the awarding body, the Division of Apprenticeship Standards of the Department of Industrial Relations, or the Division of Labor Standards Enforcement, but disallows public access to the records at the principal office of the contractor. *Whenever a copy of payroll records are made available for inspection by, or furnished to, a joint labor-management committee, existing law requires the records to be marked or obliterated to prevent disclosure of an individual's name and social security number.* Existing law provides for the reimbursement of costs incurred by a contractor, a subcontractor, an awarding body, or one of the specified state entities in preparing the payroll records requested for inspection by the public if certified copies of the payroll records have not been submitted to the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement.

This bill would restructure and renumber the provisions relating to the payroll recordkeeping requirements, would allow the public to request a copy of the payroll records directly from the contractor or subcontractor, and would allow only a contractor or a subcontractor to be reimbursed for the costs of copying the payroll records. This bill would also delete the existing prohibition relating to public access to the payroll records maintained at the principal office of the contractor and would instead specify that existing law may not be construed to require that members of the general public be given access to those records. *This bill would also require the marking or obliteration of only an individual's social security number when a copy of payroll records are made available for inspection by, or furnished to, a joint labor-management committee.* ~~This bill would also modify the provisions authorizing the use of printouts of payroll data that are maintained as computer records to require that the computer programs used to maintain the payroll records meet certain specified requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1726.5 is added to the Labor Code, to read:

1726.5. (a) The body awarding a contract for a public work, *for which the overall construction cost is greater than one hundred thousand dollars (\$100,000)*, shall report to the ~~Contractors~~ Contractors' State License Board the name and license number of each contractor and subcontractor performing the public work and the name, location, and identification number of the public works project for which the contract is awarded.

(b) The information required to be submitted by an awarding body to the ~~Contractor's~~ Contractors' State License Board pursuant to subdivision (a) shall be reported to the board not later than 30 days after the information becomes available to the awarding body.

(c) The ~~Contractor's~~ Contractors' State License Board shall include the information reported to the board by awarding bodies, as required by subdivision (a), relating to individual licensed contractors, on the board's Web site.

SEC. 2. Section 1743 of the Labor Code is amended to read:

1743. (a) (1) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment in any action to enforce the obligations of this chapter, regardless of the party bringing the action in which the judgment is rendered. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor. A contractor shall not be liable for penalties incurred as a result of a subcontractor's failure to pay prevailing wages, except as provided by Section 1775.

(2) For purposes of this section, the terms "contractor" and "subcontractor" mean contractor and subcontractor, as defined in Section 1722.1.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for

1 the workers pursuant to Section 96.7. Penalties shall be paid into
2 the General Fund.

3 (d) A final order under this chapter or a judgment thereon shall
4 be binding, with respect to the amount found to be due, on a
5 bonding company issuing a bond that secures the payment of wages
6 and a surety on a bond. The limitations period of any action on a
7 payment bond shall be tolled pending a final order that is no longer
8 subject to judicial review.

9 (e) It is the intent of the Legislature to clarify existing law and
10 to nullify *Violante v. Communities Southwest Development and*
11 *Construction Company, et al.* (2006) 138 Cal.App.4th 972.

12 SEC. 3. Section 1771.2 of the Labor Code is amended to read:

13 1771.2. (a) A joint labor-management committee established
14 pursuant to the federal Labor Management Cooperation Act of
15 1978 (Section 175a of Title 29 of the United States Code) may
16 bring an action in any court of competent jurisdiction against a
17 contractor or a subcontractor who fails to comply with the
18 requirements of this chapter, not later than four years after the
19 violation. If the court finds a violation of this chapter, it shall enjoin
20 the violation, award unpaid wages for distribution to employees,
21 and award the joint labor-management committee reasonable
22 attorney's fees, costs, and expenses incurred in maintaining the
23 action.

24 (b) For purposes of this section, the provisions of Section 1194.2
25 shall apply.

26 (c) This section shall not be construed to limit other available
27 remedies for a violation of this chapter.

28 *(d) A contractor shall not be liable for the violations of a*
29 *subcontractor in an action filed more than 180 days after the filing*
30 *of a valid notice of completion in the office of the county recorder*
31 *in each county where the public work or some part thereof was*
32 *performed, or not later than 180 days after acceptance of the public*
33 *work, whichever last occurs.*

34 SEC. 4. Section 1776 of the Labor Code is amended to read:

35 1776. (a) Each contractor and subcontractor shall keep accurate
36 payroll records, showing the name, address, social security number,
37 work classification, straight time and overtime hours worked each
38 day and week, and the actual per diem wages paid to each
39 journeyman, apprentice, worker, or other employee employed by
40 him or her in connection with the public work. Each payroll record

1 shall contain or be verified by a written declaration that it is made
2 under penalty of perjury, stating both of the following:

3 (1) The information contained in the payroll record is true and
4 correct.

5 (2) The employer has complied with the requirements of
6 Sections 1771, 1811, and 1815 for any work performed by his or
7 her employees on the public works project.

8 (b) (1) The payroll records enumerated under subdivision (a)
9 shall be certified and shall be available for inspection at all
10 reasonable hours at the principal office of the contractor on the
11 following basis:

12 (A) A certified copy of an employee's payroll record shall be
13 made available for inspection or furnished to the employee or his
14 or her authorized representative on request.

15 (B) A certified copy of all payroll records enumerated in
16 subdivision (a) shall be made available for inspection or furnished
17 upon request to a representative of the body awarding the contract,
18 the Division of Labor Standards Enforcement, and the Division
19 of Apprenticeship Standards of the Department of Industrial
20 Relations.

21 (C) A certified copy of all payroll records enumerated in
22 subdivision (a) shall be made available upon request by the public
23 for inspection or for copies thereof. A request by the public shall
24 be made through the body awarding the contract, the Division of
25 Apprenticeship Standards, or the Division of Labor Standards
26 Enforcement, or directly to the contractor or subcontractor whose
27 payroll records are requested. The requesting party shall, prior to
28 being provided the records, reimburse the contractor's or
29 subcontractor's costs of copying the payroll records.

30 (2) This section shall not be construed to require a contractor
31 or subcontractor to provide members of the general public access
32 to the records maintained at the principal office of the contractor
33 or subcontractor.

34 (c) The certified payroll records shall be on forms provided by
35 the Division of Labor Standards Enforcement or shall contain the
36 same information as the forms provided by the division. *The*
37 *payroll records may consist of printouts of payroll data that are*
38 *maintained as computer records, if the printouts contain the same*
39 *information as the forms provided by the division and the printouts*
40 *are verified in the manner specified in subdivision (a).* ~~The payroll~~

1 records may consist of printouts of payroll data that are maintained
2 as computer records, if all of the following requirements are
3 satisfied:

4 (1) ~~The printouts are in the same format as the division's forms.~~

5 (2) ~~The printouts contain the same information as the division's~~
6 ~~forms.~~

7 (3) ~~The printouts are verified in the manner specified in~~
8 ~~subdivision (a).~~

9 (4) ~~A computer program used to maintain the certified payroll~~
10 ~~records meets both of the following requirements:~~

11 (A) ~~Allows data to be entered in the certified payroll records~~
12 ~~only if the data matches the information contained in the itemized~~
13 ~~statements provided for in Section 226 of the Labor Code.~~

14 (B) ~~Prohibits any modifications to that data after it has been~~
15 ~~entered into the computer program.~~

16 (d) A contractor or subcontractor shall file a certified copy of
17 the records enumerated in subdivision (a) with the entity that
18 requested the records within 10 days after receipt of a written
19 request.

20 (e) Any copy of records made available for inspection as copies
21 and furnished upon request to the public or any public agency by
22 the awarding body, the Division of Apprenticeship Standards, or
23 the Division of Labor Standards Enforcement shall be marked or
24 obliterated to prevent disclosure of an individual's name, address,
25 and social security number. The name and address of the contractor
26 awarded the contract or the subcontractor performing the contract
27 shall not be marked or obliterated. Any copy of records made
28 available for inspection by, or furnished to, a joint
29 labor-management committee established pursuant to the federal
30 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
31 shall be marked or obliterated only to prevent disclosure of an
32 individual's social security number.

33 (f) The contractor shall inform the body awarding the contract
34 of the location of the records enumerated under subdivision (a),
35 including the street address, city, and county, and shall, within five
36 working days, provide a notice of a change of location and address.

37 (g) The contractor or subcontractor has 10 days in which to
38 comply subsequent to receipt of a written notice requesting the
39 records enumerated in subdivision (a). In the event that the
40 contractor or subcontractor fails to comply within the 10-day

1 period, he or she shall, as a penalty to the state or political
2 subdivision on whose behalf the contract is made or awarded,
3 forfeit twenty-five dollars (\$25) for each calendar day, or portion
4 thereof, for each worker, until strict compliance is effectuated.
5 Upon the request of the Division of Apprenticeship Standards or
6 the Division of Labor Standards Enforcement, these penalties shall
7 be withheld from progress payments then due. A contractor is not
8 subject to a penalty assessment pursuant to this section due to the
9 failure of a subcontractor to comply with this section.

10 (h) The body awarding the contract shall cause to be inserted
11 in the contract stipulations to effectuate this section.

12 (i) The director shall adopt rules consistent with the California
13 Public Records Act (Chapter 3.5 (commencing with Section 6250)
14 of Division 7 of Title 1 of the Government Code) and the
15 Information Practices Act of 1977 (Title 1.8 (commencing with
16 Section 1798) of Part 4 of Division 3 of the Civil Code) governing
17 the release of these records, including the establishment of
18 reasonable fees to be charged for reproducing copies of records
19 required by this section.

20 SEC. 5. The provisions of this act are severable, and if any
21 provision of this act or its application is held invalid, that invalidity
22 shall not affect other provisions or applications that can be given
23 effect without the invalid provision or application.